UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

APR 11 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Major General John F. Wall
Director of Civil Works
HQDA(DAEN-CWZ-A)
20 Massachusetts Avenue, NW
Washington, D.C. 20314-1000

Dear General Wall:

At our meeting on Tuesday, February 12, 1985, you asked me to explain the Agency's position regarding whether response actions taken under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) must, as a matter of law, comply with other environmental laws. Because this is a complex issue, I have summarized below the most significant reasons for the Agency's conclusion that CERCLA response actions need not comply with other environmental laws. I should note however that we believe that, as a matter of sound practice, CERCLA response actions should generally meet the standards established by those laws.

CERCLA, which was enacted in 1980 (after all of the other major environmental laws), created its own comprehensive system of evaluating and determining the appropriate extent of response to releases of hazardous substances. This system includes criteria which may differ sharply from the considerations underlying the regulatory programs established by the other environmental laws. For example, another environmental law may require that standards be set at a level without regard to cost, while CERCLA specifically requires that Fund-balancing considerations be taken into account for Fund-financed response actions. In addition, extensive and potentially protracted permitting procedures under an environmental law could impede rapid response actions at CERCLA sites. These inconsistencies between CERCLA and other environmental laws reveal that Congress did not intend for CERCLA response actions to be subject to the other environmental laws. Consequently, it is our position that EPA and the States, in pursuing <u>on-site</u> response actions under the authority of CERCLA, are not required to obtain permits under section 404 of the Clean Water Act or Section 10 of the Rivers and Harbor Act for those actions.

EPA has stated its position on this issue in the proposed amendments to the National Contingency Plan and has identified those situations in which it will meet standards established by other applicable laws. The discussion on pages 5864-5866 of the February 12, 1985 Federal Register sets out this position in greater detail. As I am sure you are aware, the Administration's CERCLA reauthorization bill (S.494; Section 111) specifically exempts CERCLA action from the permitting requirements of other laws. This position recently was adopted by the Senate Committee on Environment and Public Works when it voted on the Superfund Improvement Act of 1985 (see Committee Report 99-11, dated March 18, 1985).

I would appreciate it if you would take appropriate steps within the Corps to support this position and make it known to your field offices. In addition, I believe that it would be extremely beneficial to the Superfund program for staff from our respective offices to develop supplemental guidance relating to the section 10 and 404 programs for our respective field offices to use during the substantive reviews involved in the remedial investigation/feasibility study/design phases of Superfund actions. If you agree, and would designate appropriate individuals from your office to do this, I will designate EPA staff to work with them.

Thank you for your continuing support of the Superfund program.

Sincerely yours,

William N. Hedeman, Jr.
Director
Office of Emergency and Remedial Response

cc: Jack McGraw
Gene Lucero
Allan Hirsch